

Court of Appeals, State of Michigan

ORDER

Roger J Gemmen v Francis Brettman Flipse

Docket No. 258025

LC No. 02-044542-CH

Richard A. Bandstra
Presiding Judge

Janet T. Neff

Joel P. Hoekstra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the delayed application for leave to appeal, the trial court's order of July 15, 2004 granting plaintiff injunctive relief and interpreting the parties' contract, is VACATED. The trial court erred in finding that the contract language "clearly and unambiguously states the Plaintiff's intent to raze the Cottage is a condition precedent that must occur before the Defendants have any right to salvage the Cottage." The clear and unambiguous language of the addendum to the parties' contract gives defendants the right to salvage certain materials and appliances within two years of closing. "[B]ecause Buyer intends to raze it, Seller shall have the right to salvage any materials within it, . . . , and components of it within two years of closing." The contract language also contains a notice provision, providing that, if plaintiff plans to raze the house during the two year period after closing, he is required to give thirty days notice to defendants. This notice provision cannot reasonably be interpreted as conditioning defendants' salvage rights on plaintiff's discretionary decision whether to raze the cottage. This case is REMANDED to the trial court for entry of an order, denying plaintiff's request for injunctive relief to preclude defendants from exercising their rights as set forth in the parties' contract.

Neff, J. would grant the delayed application for leave to appeal.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 22 2005

Date

Sandra Schultz Mengel
Chief Clerk